



Virginia Division
(804) 775-3320

400 N. 8th Street Rm. 750
P.O. Box 10249
Richmond, Virginia 23240

**U.S. Department
of Transportation
Federal Highway
Administration**

January 28, 2004

Mr. Malcolm T. Kerley, P.E.
Chief Engineer for Program Development
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219

Dear Mr. Kerley:

This letter is in response to the two questions raised in your letter of October 30, 2003. Your first question requested confirmation of your interpretation of Section 1216(b) of the Transportation Equity Act for the 21st Century (TEA-21) and the flexibility of this section to allow the states to decide the specific vehicles to be tolled as well as the amounts of the tolls. As indicated in our December 15, 2003 response, a copy of which is attached, Section 1216(b) allows the states the flexibility to decide who and how much to toll.

In addition, your second question asked whether Section 1216(b) allows VDOT to use toll revenue from Interstate Route 81 to enhance the rail capacity in the corridor if VDOT could show a reduction of trucks traveling on Route 81 as a result of the railroad improvements. We have researched this extensively and jointly with our Office of Infrastructure and Chief Counsel in our Washington Office. Our conclusion is that under TEA 21, Section 1216(b) Pilot Program toll revenue cannot be used to enhance rail capacity in the corridor.

We evaluated alternative possible interpretations of the statute and concluded that such use of the toll revenues is not allowed. Section 1216(b) is intended to reconstruct and rehabilitate only facilities on the Interstate System. Since the Interstate System, as defined and described in 23 U.S.C. 101(a)(13) and 103(c), does not include railroads, the use of toll revenue from the operation of I-81 to enhance a freight railroad is not a permissible use of toll revenue under 1216(b)(5). Furthermore, Section 1216(b) would require Virginia to use the toll revenue only on the particular facility being tolled. Both of these points are supported by legislative history (H. Rpt. 105-85 at 516), which provides that "any State wishing to participate in the pilot program must enter into an agreement with the Secretary to ensure that no toll revenues are diverted to another facility or purpose".

We explored alternative, innovative financing approaches that could be used to enhance rail capacity in the corridor. A Federal Railroad Administration program that is similar to FHWA's TIFIA program (i.e., the "Railroad Rehabilitation and Improvement Program" in 45 U.S.C. 821, et seq.) may be an option. If you are interested in learning more about this FRA innovative financing approach, we would be pleased to provide additional information.

Should you need additional information on this matter, please do not hesitate to contact Mr. Vince Mammano at (804) 775-3355.

Sincerely

Roberto Fonseca-Martinez

cc: Dwight Horne
Don West
Edward Kussy
Michael Harkins
Phil Shucet, VDOT
Barbara Reese, VDOT

RECEIVED

JAN 30 2003

CHIEF ENGINEER



U. S. Department
of Transportation

**Federal Highway
Administration**

Virginia Division
(804) 775-3320

400 N. 8th Street, Rm. 750
P. O. Box 10249
Richmond, VA 23240

December 15, 2003

**Subject: I-81 Public Private Transportation
Act (PPTA) Tolling Proposals**

Mr. Malcolm T. Kerley, P.E.
Chief Engineer for Program Development
Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219

Dear Mr. Kerley:

In response to your letter of October 30, 2003, we have looked at the two questions you posed. Our responses to each of your questions follow.

Your first question referred to Section 1216(b) of the Transportation Equity Act for the 21st Century (TEA-21) and the flexibility of this section to allow the states to decide the specific vehicles which are to be tolled, as well as the amount of the tolls. The response to this question is that Section 1216(b) allows the states the flexibility to decide who and how much to toll.

Your second question concerns the flexibility of Section 1216(b) to allow the use of toll revenue from Interstate 81 to enhance the rail capacity in the corridor if it could be demonstrated that a reduction of trucks traveling on I-81 will result as an outcome of the rail improvements. Due to the complexity and uniqueness of this question, we have done extensive research and are currently coordinating this effort with our headquarters office, due to its sensitivity and intermodal nature. We anticipate having a response by the middle of January.

Should you have additional questions regarding Section 1216(b) of TEA-21, please feel free to contact Mr. Vince Mammano or Ms. Irene Rico of my office at (804)775-3355 or (804)775-3344, respectively.

Sincerely yours,

Roberto Fonseca-Martinez
Division Administrator

Program Administration



U.S. Department of Transportation
Federal Highway Administration

Virginia Division
(804) 775-3320

March 28, 2003

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400 N. 8th Street Rm. 750
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Richmond, Virginia 23240

IN REPLY REFER TO:

Mr. Frank Gee, Chief Engineer of Operations
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

Subject: Application I-81 Section 1216(b) of TEA 21

Dear Mr. Gee:

In response to your March 5, 2003 letter requesting approval for Virginia's I-81 application to be provisionally accepted as one of the three pilot facilities for tolling under Section 1216(b) of the Transportation Equity Act for the 21st Century, FHWA has given a "conditional provisional" acceptance. Attached is a copy of the conditional provisional acceptance memorandum from our Headquarters office.

Under this "conditional provisional" acceptance, FHWA is agreeing to reserve one of the three pilot slots for Virginia's I-81 application and allowing VDOT to proceed to Phase 2 of the process. As you have committed in your letter, FHWA fully expects VDOT to complete all remaining Phase 1 requirements before final approval is given. This conditional provisional acceptance is based on the assumption that a satisfactory timeline for subsequent actions will be developed, the proposal continues to advance in a timely manner, that the "program term" as described in TEA-21 Section 1216(b)(7) will be agreed to between FHWA and VDOT, environmental clearances are appropriately obtained, and an agreement is entered into between VDOT and FHWA under the provisions of TEA-21 Section 1216. This agreement, which must be executed prior to the FHWA's final approval to toll any portion or segment of the candidate facility, must provide for regular audits and that all toll revenues will be used in accordance with the requirements set forth in Section 1216(b)(5) of TEA-21.

If you have questions, please contact Mr. Vince Mammano at (804) 775-3355.

Sincerely,

Original Signed by Roberto Fonseca-Martinez

Roberto Fonseca-Martinez
Division Administrator

Attachment



MEMORANDUM

U.S. Department of
Transportation
Federal Highway
Administration

Subject: ACTION: Virginia - Interstate Pilot Program (IPP)
Virginia TEA-21 Section 1216(b) Candidate
(Your March 20 Memorandum)

Date: March 27, 2003

From: /s/ Original signed by Seppo I. Sillan, for
Dwight A. Horne, Director Office of Program
Administration

To: Mr. Roberto Fonseca-Martinez
Division Administrator
Richmond, Virginia

Chief Engineer C. Frank Gee's March 5, 2003, letter requests approval for Virginia's I-81 application to be provisionally accepted as one of the three pilot facilities for tolling under Section 1216(b) of the Transportation Equity Act for the 21st Century. The material included in Mr. Gee's letter provides information requested in Mr. Rentz's April 6, 1999 memorandum for "provisional" acceptance of the candidate project.

As Mr. Gee recognizes in his letter, Virginia's application, at this time, does not contain all of the information required for a full provisional acceptance under Phase I of the application process as specified by our published guidance in the Federal Register, 64 Fed. Reg. 6734 (1999). However, as indicated in that guidance, the purpose for requiring a Phase I approval was merely to establish a process for evaluating and choosing three of multiple different applications for participation in the 1216(b) pilot program. The three applications chosen under Phase I would be given a "provisional acceptance" and receive our approval to move forward with the NEPA process for the project. However, because there is no competition for participation in this program, we are approving Virginia's application and giving them a "conditional provisional" acceptance. Under this "conditional provisional" acceptance, we are agreeing to reserve one of the three pilot slots for Virginia's I-81 application and allow Virginia to proceed to Phase 2 of the process. As Mr. Gee has committed to do in his letter, we fully expect for Virginia to complete all remaining Phase 1 requirements before we give our final approval to Virginia's participation in this program. Therefore, the division office may proceed with negotiation with the State to further develop this project.

Although we are giving Virginia a "conditional provisional" acceptance and reserving for them one of the three pilot slots, we fully expect that all required information, including the completion of the NEPA process, be developed and submitted to us for a final approval before tolling any portion or segment of the candidate facility. Upon environmental clearance (which would include evaluation of the impacts of tolling), the facility segments will become eligible to be considered for final approval under the pilot program, provided all other provisions have been satisfactorily addressed. Additional

tolling segments or collection points may be added once environmental clearances are obtained.

This conditional provisional acceptance of I-81 as one of the pilot facilities is based on the assumption that a satisfactory timeline for subsequent actions will be developed, the proposal continues to advance in a timely manner, that the "program term" as described in TEA-21 Section 1216(b)(7) will be agreed to between FHWA and VDOT, environmental clearances are appropriately obtained, and an agreement is entered into between VDOT and FHWA under the provisions of TEA-21 Section 1216. This agreement, which must be executed prior to the FHWA's final approval to toll any portion or segment of the candidate facility, must provide for regular audits and that any toll revenues received from operation of the facility will be used in accordance with the requirements set forth in Section 1216(b)(5) of TEA-21 prior to tolling. This agreement is to be coordinated with HIPA-10 and HCC-30.

Additionally, Section 1216(b)(6) of TEA-21 also requires a limitation on the use of Interstate maintenance (IM) funds during the term of the pilot program, funds apportioned for IM under section 104(b)(4) of title 23, United States Code, may not be used on any segment being tolled. Once other segments are approved, then the IM restriction would attach to those segments. The IM restriction would apply to general lanes as well as any special purpose lanes, while tolls are being collected under the pilot program. Please feel free to contact Jack Wasley, of my staff at (202) 366-4658, should you have any questions or concerns about the approval contained in this memorandum.

This page last modified on October 1, 2003

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